

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:06CR672 CDP
)
ANTHONY McFERRIN,)
)
Defendant.)

ORDER

This matter is before the Court on defendant Anthony McFerrin's motion to suppress evidence and statements. Pursuant to 28 U.S.C. § 636(b), the motions were referred to United States Magistrate Judge Thomas C. Mummert. Judge Mummert held evidentiary hearings on February 16 and February 21, 2007, and thereafter filed his Report and Recommendation. He recommended that the motion to suppress statements be denied as moot because the government indicated that it did not intend to introduce evidence of defendant's statement. Judge Mummert recommended that the motion to suppress evidence be denied. Defendant has filed timely objections to the Magistrate Judge's Recommendation.

I have conducted *de novo* review of all matters presented with regard to the motions, including listening to the audio recordings of both hearings. After fully considering the motions and the Report and Recommendation, I will adopt and

sustain the thorough reasoning of Magistrate Judge Mummert set forth in support of his recommended rulings. In particular, I conclude that defendant's rights were not violated in the seizure of the guns on May 23 and October 6, 2006.

On May 23 defendant had abandoned the weapon before it was seized. In any event, the officers received information that defendant was engaged in illegal activity at that location, and even if this was not sufficient to justify an investigative detention under Terry v. Ohio, 392 U.S.1 (1968), the officers were fully authorized to approach him when they saw him standing on the sidewalk. Additionally, the evidence showed that the officers had not actually stopped McFerrin before they saw him drop the firearm; instead they had stopped and exited their vehicle and were still about ten feet away from him. There was no fourth amendment violation.

The government's evidence with regard to the October 6 incident showed that police officers saw defendant as they were patrolling the area. As they approached he walked away, they exited the car and approached the defendant. As the officer approached, defendant pulled out a gun. This gave the police more than sufficient reason to stop him, and their conduct before that did not constitute a seizure under the fourth amendment.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [#22] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

IT IS FURTHER ORDERED that defendant's motion to suppress evidence and statements [#15] is denied.

IT IS FURTHER ORDERED that this case is removed from the April 2 trial docket and is reset for trial on **Monday, April 9, 2007 at 9:00 a.m.**



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 15th day of March, 2007.